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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<i>Customer No.</i>	67292	}	
		}	
<i>Patent No.:</i>	7,373,253	}	
		}	
<i>Invention:</i>	Multi-test Analysis of Real-time Nucleic Acid Amplification	}	ELECTRONICALLY FILED ON:
		}	
<i>Inventor:</i>	David J. Eyre	}	<u>March 9, 2010</u>
		}	
<i>Issued:</i>	May 13, 2008	}	
		}	
<i>Attorney Docket:</i>	43387-69889	}	

TRANSMITTAL OF CERTIFICATE OF CORRECTION

Certificate of Correction Branch

Director for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

It is respectfully requested that a Certificate of Correction be issued in accordance with the enclosed Form PTO-1050 for Patent No. 7,373,253 pursuant to 35 U.S.C. § 254 and 37 C.F.R. § 1.322. Applicants note that the patent term adjustment (PTA) found on page 1 of the patent is incorrect according to the United States Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010).

According to 37 C.F.R. § 1.322, a patentee or patentee's assignee may request the Director to issue a Certificate of Correction to correct an error in a patent. In part, the pertinent statute provides that

[w]henEVER a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Director may issue a certificate of correction stating the fact and nature of

such mistake, under seal, without charge, to be recorded in the records of patents.

35 U.S.C. § 254.

Patentees believe that the PTA as displayed on page 1 of the instant patent is a mistake that justifies issuance of a Certificate of Correction by the Director. Pursuant to the decision rendered in *Wyeth v. Kappos*, a patentee is entitled to PTA credit for examination delay under 37 C.F.R. § 1.702(a) in addition to any examination delay under 37 C.F.R. § 1.702(b), to the extent that the two periods of delay do not occur on the same calendar day or days. For the instant patent, the records of the U.S. Patent and Trademark Office (USPTO) clearly disclose that the patent is entitled to 113 days of PTA instead of 23 days as incorrectly calculated by the USPTO. The correctly calculated PTA (i.e., 113 days) was determined according to the grounds for adjustment under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and was calculated according to the periods of adjustment under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b). Furthermore, the correctly calculated PTA is established according to the recent decision by the U.S. Court of Appeals for the Federal Circuit in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010). A summary of the correctly calculated PTA is below.

	Relevant Dates	Period of Adjustment
Examination Delay under 37 C.F.R. § 1.702(a)	<i>37 C.F.R. § 1.703(a)(1)</i> Filing date of patent application: <u>February 12, 2002</u> Fourteen months after filing date of patent application: <u>April 12, 2003</u> First Action mailed: <u>February 19, 2004</u>	Difference for which patentee should receive credit: <u>+313 days</u>

US Patent No: 7,373,253
Request for Cert. of Correction

Examination Delay under 37 C.F.R. § 1.702(a)	<p><i>37 C.F.R. § 1.703(a)(2)</i></p> <p>Response to Office Action: <u>September 21, 2007</u></p> <p>Four months after date of issue fee payment: <u>January 21, 2008</u></p> <p>Date of Notice of Allowance mailed: <u>January 28, 2008</u></p>	Difference for which patentee should receive credit: <u>+7 days</u>
Examination Delay under 37 C.F.R. § 1.702(b)	<p><i>37 C.F.R. § 1.703(b)</i></p> <p>Filing date of patent application: <u>February 12, 2002</u></p> <p>Three years after filing date of patent application: <u>February 12, 2005</u></p> <p>RCE filed by Applicant: <u>April 22, 2005</u></p>	Difference for which patentee should receive credit: <u>+ 69 days</u> , the period beginning three years after the filing date and ending on the date of filing of an RCE by Applicant pursuant to 37 C.F.R. §1.702(b)(1)
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>October 22, 2004</u></p> <p>Three-month Response date: <u>January 22, 2005</u></p> <p>Response/RCE filed in USPTO: <u>April 22, 2005</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-90 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>July 6, 2005</u></p> <p>Three-month Response date: <u>October 6, 2005</u></p> <p>Response filed in USPTO: <u>November 10, 2005</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-35 days</u>

US Patent No: 7,373,253
Request for Cert. of Correction

Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(c)(8)</i></p> <p>Submission of other paper after a reply has been filed:</p> <p>Response filed in USPTO: <u>November 10, 2005</u></p> <p>Supplemental Information Disclosure Statement filed in USPTO: <u>December 16, 2005</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-36 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>September 5, 2006</u></p> <p>Three-month Response date: <u>December 5, 2006</u></p> <p>Response filed in USPTO: <u>December 28, 2006</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-23 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>March 21, 2007</u></p> <p>Three-month Response date: <u>June 21, 2007</u></p> <p>Response filed in USPTO: <u>September 21, 2007</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-92 days</u>
Total		<u>113 days</u>

The mistake in PTA calculation for the instant patent was incurred through the fault of the USPTO. As held in *Wyeth v. Kappos*, the USPTO's prior interpretation of 35 U.S.C. 154(b) resulted in an incorrect determination of PTA for many issued patents. The USPTO's erroneous prior application of PTA calculations directly resulted in the incorrect PTA determination for the instant patent.

Accordingly, the Patentee of the above-identified patent is entitled to a credit for the sum of 320 days under 37 C.F.R. § 1.702(a) and 69 days under 37 C.F.R. § 1.702(b), for a total of 389 days, subject to a reduction of 276 days under 37 C.F.R. § 1.704. Thus, the Patentee respectfully submits the total PTA is 113 days and, in light of the Federal Circuit's decision in *Wyeth v. Kappos*, request that the Director issue a Certificate of Correction stating the fact and nature of such mistake to be recorded in the records of patents.

As this mistake was incurred through the fault of the USPTO, the Patentee believes that no fees are required with the filing of this request for Certificate of Correction. However, if fees are required, the Director is hereby authorized to charge any defect or deficiency in fees or credit any overpayment to Deposit Account No. 10-0435 with reference to our Matter Number 43387-69889. Please send the Certificate of Correction to the undersigned attorney for the Patentees.

Respectfully submitted,

/Eric E. Williams/
Eric E. Williams
Registration No. 61,302

EEW/glt
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